

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DIGITAL MENTOR, INC., a Delaware
corporation,

Plaintiff,

v.

OVIVO USA, LLC, a Delaware corporation;
OVIVO US HOLDING INC., a Delaware
corporation; VALERE MORISSETTE, an
individual; and DOES 1 to 20,

Defendants.

Case No. 2:17-CV-01935-RAJ

**JOINT STATUS REPORT AND
DISCOVERY PLAN**

Pursuant to Federal Rule of Civil Procedure (“FRCP”) 26(f), Local Civil Rule (“LCR”) 26(f), the Order Regarding Initial Disclosures and Joint Status Report dated February 12, 2018 (Dkt. No. 65), the Court Notice dated February 22, 2018 and the Court Notice dated January 2, 2019, resetting the deadline in which to file the Joint FRCP 26(f) Report, Plaintiff Digital Mentor, Inc. (“DMI”) and Defendant Ovivo USA LLC (“Ovivo USA”) respectfully submit this Joint Status Report and Discovery Plan.

I. STATEMENT OF NATURE AND COMPLEXITY OF CASE

Plaintiff Digital Mentor Inc. (“DMI”) filed this action against Defendants Ovivo USA LLC. (“Ovivo USA”) et al. on December 28th, 2017 for damages and injunctive relief

1 alleging the following causes of action: Violation Of The Federal Defend Trade Secrets Act ,
2 Violation Of The Federal Racketeer Influenced And Corrupt Organizations Act, Trademark
3 Infringement, Copyright Infringement, Violation Of The Washington Uniform Trade Secrets
4 Act, Violation Of The Washington Consumer Protection Act, Breach Of Contract, Tortious
5 Interference With Business Expectancy, Fraud, Breach Of Fiduciary Duty and Unjust
6 Enrichment.
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8 To date, the motions in this action have included an Ex Parte Motion for Temporary
9 Restraining Order and Motion for Preliminary Injunction brought on behalf of DMI. While
10 the Court granted the TRO Motion (Dkt. No. 35), after further briefing and hearing, the
11 Court denied DMI's Motion for Preliminary Injunction (Dkt. No. 75.) In addition, Motions to
12 Dismiss were brought on behalf of Ovivo USA ("Ovivo USA") and its co-defendants, Valere
13 Morrisette and Ovivo US Holding, Inc. On December 21st, 2018, the Court dismissed
14 Valere Morrisette and Ovivo US Holding, Inc. from the case due to a lack of jurisdiction.
15 The Court granted-in-part Ovivo USA's Motion to Dismiss, dismissing without prejudice
16 DMI's causes of action for Violation Of The Federal Defend Trade Secrets Act, Violation Of
17 The Federal Racketeer Influenced And Corrupt Organizations Act, Violation Of The
18 Washington Uniform Trade Secrets Act, Violation Of The Washington Consumer Protection
19 Act, Breach Of Fiduciary Duty and Unjust Enrichment. The case against Ovivo USA will
20 proceed, at this stage, as to: Trademark Infringement, Copyright Infringement, Breach Of
21 Contract, Tortious Interference With Business Expectancy and Fraud.
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The Parties consider this matter to be moderately complex as to the factual and legal issues involved, and also as to the nature of discovery needed to develop and present their cases.

II. PROPOSED DEADLINE FOR JOINING ADDITIONAL PARTIES

The parties propose that the deadline for joining additional parties be March 22, 2019.

III. WHETHER THE PARTIES CONSENT TO ASSIGNMENT TO A MAGISTRATE JUDGE TO CONDUCT ALL PROCEEDINGS

No.

IV. DISCOVERY PLAN THAT STATES THE PARTIES' VIEWS AND PROPOSALS ON ITEMS SET FORTH IN FRCP 26(f)(3)

(A) EXCHANGE OF INITIAL DISCLOSURES

The Parties exchanged initial disclosures under FRCP 26(a)(1) on January 18, 2019.

(B) SUBJECTS, TIMING, AND POTENTIAL PHASING OF DISCOVERY

The Parties propose the following case schedule:

Event	Proposed Date
Close of Fact Discovery	September 20, 2019
Disclosure of Identity of Expert Witnesses for Party Bearing the Burden of Proof	September 23, 2019
Disclosure of Identity of Expert Witnesses for Party Not Bearing the Burden of Proof	October 28, 2019
Opening Expert Report for the Party Bearing the Burden of Proof	October 21, 2019
Rebuttal Expert Report for the Party Not Bearing the Burden of Proof	November 20, 2019
Close of Expert Discovery	December 20, 2019
Due Date for Dispositive Motions	January 20, 2020

Event	Proposed Date
Due Date for Opposition to Dispositive Motions	February 20, 2020
Due Date for Replies in Support of Dispositive Motions	March 6, 2020
Proposed Trial Date	May 11, 2020

(C) ELECTRONICALLY STORED INFORMATION

The Parties agree that this case will involve electronically stored information (“ESI”).

The Parties agree that documents and ESI shall be produced electronically. To the extent either party believes, on a case-by-case basis, that documents should be produced in an alternative format, the Parties agree that they will meet and confer in good faith concerning such alternative production arrangements.

The Parties further agree to adopt an ESI Agreement based on this District’s ESI Model Agreement, as modified by the Parties, and to preserve and produce ESI pursuant to that Agreement. The Parties further agree that they will meet and confer in good faith to ensure electronic discovery is proportional to the scope and nature of the dispute, and that the format of each party’s production is compatible with the reasonable technical requirements of the receiving party’s document management system.

(D) PRIVILEGE ISSUES

The Parties do not believe that this case will involve unique or extensive claims of privilege or work product protection. To that end, the Parties agree to create and maintain privilege logs pursuant to FRCP 26(b)(5) for responsive documents withheld on the basis of privilege. The Parties agree that any materials protected from discovery by the attorney-client privilege or the work product doctrine and created after December 29, 2017 (the

1 Complaint filing date), solely for the purposes of this litigation, need not be logged.

2 Information produced in discovery that is protected as privileged or work product
3 shall be immediately returned to the producing party, and its production shall not constitute a
4 waiver of such protection, if: (i) such information appears on its face to have been
5 inadvertently produced, or (ii) the producing party provides notice promptly after discovery
6 by the producing party of the inadvertent production.
7

8 **(E) PROPOSED LIMITATIONS ON DISCOVERY**

9 The Parties do not currently propose any limitations on discovery under the Federal
10 or Local Rules of Civil Procedure.

11 **(F) THE NEED FOR ANY DISCOVERY RELATED ORDERS**

12 The Parties anticipate the exchange of confidential information during discovery in
13 this matter, and thus will work together to present the Court with a stipulated two-tier
14 protective order to protect the confidentiality of such information. In addition, the Parties
15 will work together to present the Court with a stipulated ESI order to govern production of
16 electronically stored information.
17

18 **V. THE PARTIES' VIEWS, PROPOSALS, AND AGREEMENTS ON ALL**
19 **ITEMS SET FORTH IN LOCAL RULE 26(f)(1)**

20 **(A) PROMPT CASE RESOLUTION**

21 The Parties have no suggestions at this time.

22 **(B) ALTERNATIVE DISPUTE RESOLUTION**

23 While the parties continue to be willing to consider an alternative dispute resolution
24 approach, they believe that such efforts may be premature at this time.
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1 **(C) RELATED CASES**

2 There are currently no related court cases pending. There are two pending
3 Opposition proceedings pending with the United States Patent and Trademark Office. The
4 Opposition Proceedings are pending under Opposition Nos. 91244516 and 91241101. Both
5 oppositions are stayed pending resolution of this case.
6

7 **(D) DISCOVERY MANAGEMENT**

8 The Parties agree to work together to manage discovery to promote the expeditious
9 and efficient resolution of the case to the extent practicable and appropriate.

10 The Parties agree that discovery papers and pleadings are to be served upon the
11 Parties, to the extent possible, by email to the email address of counsel of record for the
12 parties.
13

14 The Parties do not believe that the pretrial statements and pretrial order pursuant to
15 Local Rules CR 16(e), (h), (i), and (l) and 16.1 should be dispensed with.

16 **(E) ANTICIPATED DISCOVERY SOUGHT**

17 See above.

18 **(F) PHASING MOTIONS**

19 The Parties do not anticipate any other early motions at this time.
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21 **(G) PRESERVATION OF DISCOVERABLE INFORMATION**

22 The Parties have discussed and confirmed that they have taken reasonable and
23 proportional steps to preserve relevant information and documents in their custody and
24 control. The Parties agree that such discussions do not waive the right or opportunity for a
25 party to argue that preservation was not reasonable, adequate or proportional or to seek
26

1 remedies for spoliation.

2 **(H) PRIVILEGE ISSUES**

3 See above.

4 **(I) MODEL PROTOCOL FOR DISCOVERY OF ESI**

5 The Parties are working together to present the Court with a stipulated ESI order to
6 govern production of electronically stored information. The parties have used the Model
7 Protocol as a starting point for their discussions.

8 **(J) ALTERNATIVES TO MODEL PROTOCOL**

9 The Parties are working together to present the Court with a stipulated ESI order to
10 govern production of electronically stored information. The parties have used the Model
11 Protocol as a starting point for their discussions.

12 **VI. DATE BY WHICH DISCOVERY CAN BE COMPLETED**

13 See table of proposed schedule above.

14 **VII. WHETHER THE CASE SHOULD BE BIFURCATED BY TRYING THE**
15 **LIABILITY ISSUES BEFORE THE DAMAGES ISSUES, OR**
16 **BIFURCATED IN ANY OTHER WAY**

17 At this time, the Parties do not believe that the issues need to be bifurcated.

18 **VIII. WHETHER THE PARTIES INTEND TO UTILIZE THE**
19 **INDIVIDUALIZED TRIAL PROGRAM OR ADR**

20 The Parties are not agreeable to participating in the Individualized Trial Program at
21 this time. The Parties continue to consider whether to utilize ADR in the future.

22 **IX. ANY OTHER SUGGESTIONS FOR SHORTENING OR SIMPLIFYING**
23 **THE CASE**

24 The Parties currently have no suggestions for shortening or simplifying the case.

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X. THE DATE THE CASE WILL BE READY FOR TRIAL

The Parties believe the case will be ready for trial on May 11, 2020.

XI. WHETHER THE TRIAL WILL BE JURY OR NON-JURY

Plaintiff has requested a jury trial.

XII. THE NUMBER OF TRIAL DAYS REQUIRED

Plaintiff estimate that the trial will take approximately 7-10 days. Defendant estimates that the trial will take approximately 5 full Court days.

XIII. THE DATES ON WHICH TRIAL COUNSEL MAY HAVE COMPLICATIONS TO BE CONSIDERED IN SETTING A TRIAL DATE

DMI's counsel currently has the following conflicts due to trials already scheduled in other actions: September 2019, December 2019 and January 2020.

Ovivo USA and its counsel currently have the following conflicts due to long standing prior commitments: June 6 – 18, 2019; July 22-26, 2019; September 2019; October 11-31, 2019; and November 1-15, 2019.

XIV. THE DATES ON WHICH CORPORATE DISCLOSURE STATEMENTS WERE FILED

DMI filed its corporate disclosure statement on January 10, 2018 (Dkt. No. 10), and Ovivo USA filed its corporate disclosure statement on January 19, 2018 (Dkt. No. 30).

XV. SERVICE ON ALL DEFENDANT(S) OR RESPONDENT(S)

Service has been accomplished for all named parties.

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1 Dated this 25th day of January, 2019.

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4
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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of January, 2019, I caused to be served the foregoing JOINT STATUS REPORT AND DISCOVERY PLAN on the following parties at the following addresses:

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by:

- ☐ U.S. Postal Service, ordinary first class mail
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- ☐ return receipt requested
- ☐ hand delivery
- ☐ facsimile
- ☒ electronic service – via United States District Court – Western District of Washington’s Electronic Case Filing System (“ECF”)
- ☐ other (specify) _____

/s/ Troy Greenfield
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